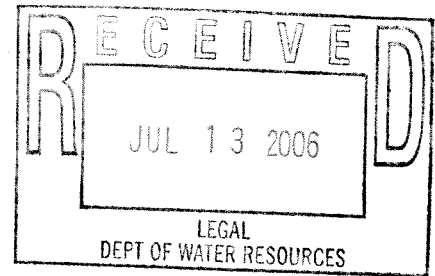


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14
15 **SUPERIOR COURT OF ARIZONA**
16 **MARICOPA COUNTY**

17 **IN RE THE GENERAL**
18 **ADJUDICATION OF ALL RIGHTS TO**
19 **USE WATER IN THE GILA RIVER**
20 **SYSTEM AND SOURCE.**

No. W-1 (Salt)
No. W-2 (Verde)
No. W-3 (Upper Gila)
No. W-4 (San Pedro)

CONTESTED CASE NO. W1-208

**STIPULATION OF PARTIES TO THE
TOHONO O'ODHAM SETTLEMENT
AGREEMENT AND REQUEST FOR
ENTRY OF JUDGMENT AND DECREE**

24 THIS STIPULATION, dated as of July 11, 2006, is entered into among the United
25 States of America acting on behalf of the Tohono O'odham Nation ("Nation") and
26 individual Indian trust allotment landowners located within the San Xavier Indian
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1 Reservation ("Allottees"), the City of Tucson ("Tucson"); and Farmers Investment Co. and
2 Farmers Water Co. (collectively, "FICO").

3 1. **RECITALS**

4 1.1 The water rights claims within the Tucson Management Area of the Nation,
5 the Allottees and the United States on behalf of the Nation and the Allottees are to be
6 permanently settled by agreement among the Nation, the Allottees, the United States on
7 behalf of the Nation and the Allottees, the State of Arizona, Tucson, FICO and Asarco, the
8 parties to the Tohono O'odham Settlement Agreement ("Settlement Agreement"). A copy
9 of the Settlement Agreement including all related and incorporated agreements between the
10 undersigned parties is attached hereto as Exhibit A and by this reference incorporated
11 herein. The terms of the Settlement Agreement were ratified and approved by Congress in
12 the Southern Arizona Water Rights Settlement Amendments Act of 2004, P.L. 108-451
13 ("Settlement Act"). Pursuant to section 302(b)(1)(a) of the Settlement Act, the parties have
14 revised the Settlement Agreement to conform it to the Settlement Act.

15 1.2 The water rights claims filed by the United States and listed in the
16 Application for Special Proceedings are subject to the jurisdiction of this Court.

17 1.3 The parties to this Stipulation are submitting the Settlement Agreement to this
18 Court for its approval pursuant to Section 302 of the Settlement Act and the Arizona
19 Supreme Court's Special Procedural Order Providing for the Approval of Federal Water
20 Rights Settlements, Including Those of Indian Tribes, dated May 16, 1991.

21 1.4 Proceedings to determine the nature and extent of the rights to water of the
22 United States on behalf of the Nation and the Allottees are pending in the Gila River
23 Adjudication Proceedings.

24 1.5 Recognizing that final resolution of these and other pending proceedings may
25 take many years, entail great expense, prolong uncertainty concerning the availability of
26 water supplies, and seriously impair the long-term economic well-being of all parties in the
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1 region, the Nation, its neighboring non-Indian communities and others have agreed to settle
2 permanently the water rights disputes.

3 1.6 In keeping with its trust responsibility to Indian tribes and to promote tribal
4 sovereignty and economic self-sufficiency, it is the policy of the United States to settle
5 whenever possible water rights claims of Indian tribes without lengthy and costly litigation.

6 1.7 Upon execution of this Court's order for special proceedings, the undersigned
7 parties will promptly file the complete Settlement Agreement, including all related and
8 incorporated agreements in every Arizona County, and at the Department of Water
9 Resources ("DWR"). The Settlement Agreement is intended to be enforceable among the
10 parties to this Stipulation and the Settlement Agreement in pursuing their claims in these
11 proceedings.

12 NOW, THEREFORE, in consideration of the promises and agreement hereinafter set forth,
13 the parties hereto stipulate as follows:

14 2. **DEFINITIONS**

15 2.1 Except as specifically defined herein, the capitalized terms used in this
16 Stipulation shall be defined as stated in the Settlement Agreement.

17 3. **STIPULATIONS AND AGREEMENTS**

18 3.1 The Settlement Agreement includes as exhibits additional and subsidiary
19 documents in the forms of agreements, terms of legislation, stipulations, forms of
20 judgment, concepts and policies. Each exhibit to the Settlement Agreement is binding only
21 on the specific parties to such exhibit unless expressly provided otherwise. No party to the
22 Settlement Agreement has, by reason of the Settlement Agreement, any third-party
23 enforcement or other rights under any exhibit to the Settlement Agreement to which it is
24 not a party.

25 3.2 The description of the terms of the Settlement Agreement set forth in this
26 Stipulation is not intended to supersede the terms of the Settlement Agreement. In the
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event any aspect of the Stipulation varies from or conflicts with the terms of the Settlement Agreement, the terms of the Settlement Agreement shall control.

4. THE NATION'S WATER RIGHTS

4.1 The Nation shall have the following rights to water in the Tucson Management Area, which shall be held in trust by the United States on behalf of the Nation and the Allottees as described in paragraph 4.1 of the Settlement Agreement:

<u>SOURCE</u>	<u>AMOUNT</u>
<u>Underground water</u>	
San Xavier Reservation	13,200 Acre-feet/yr*
Eastern Schuk Toak District	10,000 Acre-feet/yr*
<u>Total CAP Indian Priority Water Currently</u>	3,200 Acre-feet/yr*
<u>Under Contract</u>	
San Xavier Reservation	37,800 Acre-feet/yr
Eastern Schuk Toak District	27,000 Acre-feet/yr
<u>Total New CAP NIA Priority Water</u>	10,800 Acre-feet/yr
San Xavier Reservation	28,200 Acre-feet/yr
Eastern Schuk Toak District	23,000 Acre-feet/yr
<u>TOTAL</u>	<u>5,200 Acre-feet/yr</u>
	79,200 Acre-feet/yr*

*The availability of groundwater is not guaranteed.

4.2 The Nation may use water listed in paragraph 4.1 for any use.

4.3 Except as provided in Section 309(b)(1)(C) of the Settlement Act, the Nation may use water listed in paragraph 4.1 at any location within the Nation's Reservation.

4.4 The Nation may use water listed in paragraph 4.1 outside the Nation's Reservation and within the State as follows:

4.4.1 Groundwater supplies may be used pursuant to the Asarco Agreement;

4.4.2 CAP water may be used within the CAP service area; and

4.4.3 Water derived from Marketable Credits may be used only in accordance with State law.

4.5 No CAP water may be leased, exchanged, forborne or otherwise transferred by the Nation for any direct or indirect use outside the State.

1 4.6 Except as otherwise provided in the Settlement Agreement, the quantities of
2 water associated with the sources described in subparagraph 4.1 shall not be construed to
3 limit or guarantee the quantities of water available for those sources in any Year.

4 **5. THE SECRETARY'S WATER DELIVERY OBLIGATIONS**

5 5.1 Pursuant to the terms of the Settlement Act, the Secretary of the Interior shall
6 deliver 66,000 acre-feet per Year of CAP water, notwithstanding any declaration by the
7 Secretary of a shortage on the Colorado River.

8 5.2 The Secretary shall provide compensation if the Secretary is unable to acquire
9 and deliver sufficient quantities of CAP water or an equivalent quantity of water as defined
10 in the Settlement Act.

11 5.3 The Secretary shall firm 28,200 acre-feet per Year of CAP NIA Priority Water
12 for the benefit of the Nation, to the equivalent of CAP M&I Priority Water for a period of
13 100 Years after the Enforceability Date. The State of Arizona shall assist the Secretary by
14 providing \$3,000,000 in cash or in-kind goods and services.

15 **6. THE TUCSON AGREEMENT**

16 6.1 The parties to the Tucson Agreement are Tucson, the Nation, the Allottees
17 and the United States on behalf of the Nation and the Allottees.

18 6.2 Tucson agrees to pay \$300,000 to a Sinkhole Repair Fund controlled by the
19 San Xavier District for repair of sinkholes on the San Xavier Indian Reservation. The
20 payments will be made in five (5) equal annual installments. Allottees, tribal members and
21 the Nation may request funds from the Fund. After ten (10) years from the effective date of
22 the Tucson Agreement, if the Fund has not been used for five (5) years, the District may use
23 any remaining funds for land and water protection projects on the San Xavier Indian
24 Reservation.

25 6.3 The Nation and the United States on behalf of the Nation waive and release
26 claims against Tucson for injuries to land on the San Xavier Indian Reservation as a result
27 of sinkholes. The Allottees and the United States on behalf of the Allottees waive and
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1 release claims against Tucson for injuries to land on the San Xavier Indian Reservation as a
2 result of sinkholes, land subsidence or erosion. Claims by the Nation against Tucson for
3 land subsidence, erosion or other injuries to the land with the San Xavier Indian
4 Reservation or eastern Schuk Toak District must follow certain administrative procedures
5 established in the Tucson Agreement.

6 6.4 The Tucson Agreement is enforceable in either this proceeding or in federal
7 court. Remedies are limited to equitable, declaratory and injunctive relief. Money
8 damages may not be awarded except as provided in the Tucson Agreement.

9 **7. THE ASARCO AGREEMENT**

10 7.1 The parties to the Asarco Agreement are Asarco, the Nation, the Allottees, the
11 San Xavier District and the United States on behalf of the Nation and the Allottees.

12 7.2 The Asarco Agreement provides for the Nation to deliver up to 10,000 acre-
13 feet per year of CAP water to Asarco to replace groundwater pumping by Asarco on or near
14 the San Xavier Indian Reservation. Asarco will pay the Nation \$15 per acre-foot for water
15 that Asarco would otherwise pump on the San Xavier Indian Reservation under the
16 Nation's Well Site Lease to Asarco, and \$20 per acre foot for water that Asarco would
17 otherwise pump off the Reservation. These rates will be increased by 13% every five years
18 to account for inflation. The replacement of groundwater by CAP water will generate
19 marketable in lieu groundwater credits for the Nation. This Agreement will expire in 25
20 years unless the Nation desires to continue to deliver water to Asarco for an addition 10 to
21 25 years.

22 7.3 Asarco will construct and maintain the infrastructure for delivery of CAP
23 water but may borrow \$800,000 from the Nation for a term of 14 years at 6% interest.

24 7.4 Pursuant to Arizona statute, the Nation earns long-term storage credits for
25 Asarco's use of CAP water in substitution for groundwater. The parties to this Agreement
26 have valued storage credits at \$40 per acre-foot.

1 7.5 The Nation, Allottees and the United States on behalf of the Nation and
2 Allottees waive and release claims of water rights and injuries to water rights against
3 Asarco for Asarco's pumping of groundwater in accordance with its Arizona state law
4 water rights. Asarco waives and releases any claims it may have against the Nation, the
5 District, the Allottees and the United States on behalf of the Nation and the Allottees for
6 groundwater pumping in accordance with the Settlement Act.

7 7.6 If Asarco begins to use CAP water instead of pumping groundwater, the
8 Asarco Agreement provides for a contingent settlement of the groundwater contamination
9 claim against Asarco included in the *Alvarez v. Tucson* litigation. Asarco payments for CAP
10 water will be deposited into an account designated as the Groundwater Contamination
11 Settlement Account. Monies in the Fund will be invested and managed by the San Xavier
12 Allottees Association Board of Directors. If Asarco commences to take CAP water, Asarco
13 is obligated to contribute \$1.5 million to the Settlement Account within a 14 year period. If
14 Asarco commences to take CAP water, the Allottees agree to file a motion to certify a non-
15 opt out subclass and to dismiss the groundwater contamination claim against Asarco with
16 prejudice within 30 days after Asarco begins to use the Nation's CAP water.

17 7.7 The Asarco Agreement limits remedies for violations of this Agreement to
18 equitable, declaratory and injunctive relief. The Agreement prohibits money damage
19 awards except for damages related to the obligations for Asarco to make payments to the
20 Nation, the San Xavier District and the Fund.

21 8. THE FICO AGREEMENT

22 8.1 The parties to the FICO Agreement are FICO, the Nation, the Allottees, the
23 San Xavier District and the United States on behalf of the Nation and the Allottees.

24 8.2 FICO agrees to limit groundwater pumping within two miles of the San
25 Xavier Indian Reservation to no more than an average of 850 acre-feet per year and to limit
26 groundwater pumping from all of FICO's lands to 36,000 acre feet per year not including
27 groundwater in storage. FICO further agrees not to sell groundwater credits acquired under
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1 Arizona law to anyone who would pump the credits from a location within three (3) miles
2 of the boundaries of the Nation's Reservation.

3 8.3 The Nation, Allottees and the United States on behalf of the Nation and
4 Allottees waive and release claims of water rights and injuries to water rights against FICO
5 for FICO's pumping of groundwater in accordance with its Arizona state law water rights.
6 FICO waives and releases any claims it may have against the Nation, the Allottees and the
7 United States on behalf of the Nation and the Allottees for groundwater pumping in
8 accordance with the Settlement Act.

9 8.4 The FICO Agreement limits remedies for violations of this Agreement to
10 equitable, declaratory and injunctive relief.

11 **9. THE NATION'S RIGHT TO LEASE CAP WATER**

12 9.1 The Nation may lease CAP water, to water users outside of the Nation's
13 Reservation for a term not to exceed 100 years in accordance with section 309(c) of the
14 Settlement Act.

15 9.2 For leases with terms in excess of 25 years, the Nation shall offer the lease to
16 users within the Tucson Management Area. If the Nation receives no proposals from users
17 within the Tucson Management Area, the Nation may offer the lease to users outside the
18 Tucson Management Area but within the CAP service area, subject to a right by Qualified
19 Entities within the Tucson Management Area of making counteroffers. A counteroffer
20 matches or is superior to a proposal from an entity outside the Tucson Management Area if
21 it matches the price and other substantive terms of the proposed transaction.

22 **10. ALLOTTEE WATER RIGHTS**

23 10.1 Subject to the provisions of the Settlement Act, the Nation shall allocate as a
24 first right of beneficial use to the Allottees, the San Xavier District and other persons within
25 the San Xavier District, 35,000 acre-feet of CAP water, 10,000 acre-feet of groundwater,
26 groundwater withdrawn from exempt wells, deferred pumping storage credits and storage
27 credits that cannot be lawfully recovered outside the Nation's Reservation.
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1 10.2 The Settlement Act and the Settlement Agreement provide that the Nation
2 shall have the right, subject to applicable Federal law, to allocate Water to all users on the
3 Reservation pursuant to the Water Code, to be enacted by the Nation and approved (in part)
4 by the Secretary as provided in the Settlement Act, and manage, regulate and control the
5 water resources of the Nation and the water resources granted or confirmed by the
6 Settlement Act.

7 10.3 The Settlement Act and Settlement Agreement provide the means and manner
8 for the consideration and determination by the Nation of any request by any water users on
9 the Reservation (including any water users on allotted land), for an allocation of water,
10 including a process for appeal and adjudication of denied or disputed distributions of water
11 and for resolution of contested administrative decisions.

12 **11. WAIVERS OF CLAIMS AND RESERVATIONS OF RIGHTS**

13 11.1 The Settlement Agreement provides for the waiver of claims for water rights
14 and injuries to water rights and retention of rights in subparagraphs 15.1 through 15.4,
15 inclusive.

16 **12. OTHER PROVISIONS**

17 12.1 No modification of the Settlement Agreement shall be effective unless it is in
18 writing, signed by all parties, and is approved by the Gila River Adjudication Court.
19 Notwithstanding the foregoing, exhibits to the Settlement Agreement may be amended by
20 the parties to such exhibits to the Settlement Agreement in accordance with their terms,
21 without court approval, unless such approval is required in the exhibit to the Settlement
22 Agreement or by law; provided, however, that no amendment of any exhibit may violate
23 any provisions of the Act, or the Settlement Agreement, or adversely affect the rights under
24 this Agreement of any Party who is not a signatory of such an amendment.

25 12.2 Execution of the Settlement Agreement by the Governor of the State
26 constitutes the commitment of the State to use good faith efforts to carry out the terms and
27 conditions of subparagraphs 5.10.2, 8.8, and 17.2 of the Settlement Agreement. Except as
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1 provided in the preceding sentence, it is not intended that the Settlement Agreement shall
2 be determinative of any decision to be made by any State agency in any administrative,
3 adjudicatory, rule making, or other proceeding or matter. Except as provided in the
4 Settlement Agreement, nothing therein shall be construed as a waiver of any rights that the
5 State has as to its natural resources.

6 12.3 Any party shall have the right to petition the Gila River Adjudication Court or
7 a court of the United States having jurisdiction, for such declaratory and injunctive relief as
8 may be necessary to enforce the terms, conditions and limitations of this Agreement and
9 monetary relief as provided in this Agreement and as limited by section 312(h) of the
10 SAWRSA Amendments. Nothing contained herein shall grant or give the right to any Party
11 to petition any court of the Nation or any state court other than the Gila River Adjudication
12 Court for monetary relief or for any declaratory or injunctive relief to enforce the terms,
13 conditions and limitations provided in this Agreement, except as provided in section 312(i)
14 of the SAWRSA Amendments.

15 12.4 No part of the Settlement Agreement should be construed, in whole or in part,
16 as providing consent by any of the non-Indian parties to the legislative, executive or
17 judicial jurisdiction or authority of the Nation in connection with activities, rights, or duties
18 contemplated by the Settlement Agreement and conducted by any of those parties outside
19 the exterior boundaries of the Nation's Reservation. The Settlement Agreement should not
20 be construed as a commercial dealing, contract, lease or other arrangement that creates a
21 consensual relationship between any non-Indian party and the Nation so as to provide a
22 basis for the Nation's legislative, executive or judicial jurisdiction or authority over the
23 non-Indian parties to this Settlement Agreement under *Montana v. United States*, 450 U.S.
24 544 (1981) for activities conducted outside the exterior boundaries of the Nation's
25 Reservation. The activities, rights or duties conducted or undertaken by the non-Indian
26 parties pursuant to the Settlement Agreement outside the exterior boundaries of the Nation's
27 Reservation shall not be construed as conduct that threatens or affects the political integrity,
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1 economic security or health and welfare of the Nation so as to provide a basis for the
2 exercise of the Nation's legislative, executive or judicial jurisdiction or authority over the
3 non-Indian parties to the Settlement Agreement under *Montana v. United States* 450 U.S.
4 544 (1981). Benefits and rights accruing to the non-Indian parties to the Settlement
5 Agreement are provided as consideration for benefits and rights accruing to the Nation, and
6 shall not be construed as privileges, benefits, tribal services or other advantages of civilized
7 society provided by the Nation that would justify the imposition of the Nation's legislative,
8 executive or judicial authority over those parties in regard to the activities, rights and duties
9 conducted outside the exterior boundaries of the Reservation. The enactment of legislation
10 authorizing or ratifying the Settlement Agreement shall not be construed as a congressional
11 delegation of authority to the Nation of legislative, executive or judicial jurisdiction or
12 authority over the non-Indian parties hereto.

13 12.5 Nothing in the Settlement Agreement shall be construed to quantify or
14 otherwise affect the water rights, claims or entitlements to water of any tribe, band or
15 community other than the Nation.

16 NOW, THEREFORE, the parties to this Stipulation request that, upon this Court's
17 approval of the Stipulation and Settlement Agreement, and upon the date the Secretary of
18 the Interior causes to be published in the Federal Register a statement of findings that the
19 conditions set forth in Section 302(b) of the Settlement Act have occurred, this Court enter
20 the Judgment and Decree attached as Exhibit B hereto fully, finally and permanently
21 adjudicating the rights within the Tucson Management Area of the Nation, the Allottees
22 and the United States acting on behalf of the Nation and the Allottees, to the water supplies
23 within this Court's jurisdiction as provided by the terms of the Settlement Agreement.

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1 DATED this 14th day of July, 2006.

2 SACKS TIERNEY P.A.

3
4 By Judith M. Dworkin
5 Marvin S. Cohen
6 Judith M. Dworkin
7 Attorneys for City of Tucson
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SOMACH, SIMMONS & DUNN

By Robert B. Hoffman for
Robert B. Hoffman
Attorney for Farmers Investment Co. and
Farmers Water Co.

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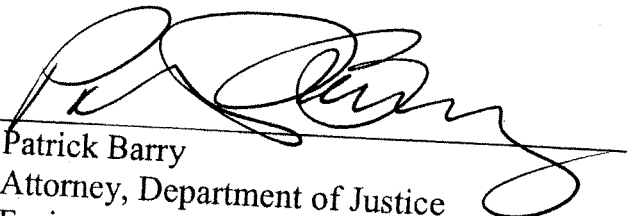
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UNITED STATES OF AMERICA

By 
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1 COPY OF THE FOREGOING MAILED
2 this ____ day of _____, 2006, to:

3 Gila River Adjudication W-1, W-2, W-3, W-4
4 Court Approved Mailing List dated July 7, 2006.
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